IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1435 OF 1990

Bharat Desai. ...Petitioner
V/s
Union of India & Ors. ...Respondents

Mr.K.R. Bulchandani i/b. M/s.Kamal & Co. for Petitioner.
Mr.Kiran Kandpile for Respondents.

CORAM : S. RADHAKRISHNAN AND A.S. AGUIAR, JJ.

DATED : JUNE 9, 2005.

P.C. :-

1. By this petition, the petitioner is seeking to challenge the action of the respondents-Controller of Imports and Exports, refusing to grant import licences for import of dry fruits during the period AM 1985.

2. The brief facts of the case are that the petitioner was carrying on business in dry fruits and has been importing dry fruits right from 1980-81. The petitioner was permitted to import dry fruits as an OGL item and there was no specific licence required. From 1981-82, due to change of policy, specific licence was required to be obtained for import of dry fruits which

was to the value in each case to be equal to 50% of annual average imports of dry fruits by the applicant during the past three years. It appears that in the year 1981, the petitioner had again obtained a licence for import of dry fruits for a minimum value of Rs.10,000/-. In the year 1982-83, the respondents had granted the import licence to the petitioner based on the import during the previous year and based on the Bill of Entry dated 4th May 1979. Again in the year 1982, another licence was issued for import of dry fruits. In 1983, again another fresh import licence was issued on 20th October, 1983 for a sum of Rs.20,000/-.

3. The petitioner thereafter appears to have approached the respondents for a fresh import licence for the year 1984-85 for the same c.i.f. value of Rs.20,000/- by his application dated 26th June, 1984. The petitioner also informed the respondents at that time that while shifting all the records, the original triplicate copy of the Bill of Entry and invoice alongwith the Bank remittance particulars evidencing importation under the said Bill of Entry No.874/79, were

misplaced. However, the petitioner had furnished to the respondents a certified true copy of the said Bill of Entry certified to be true by Assistant Commissioner of Customs. Inspite of the same, the respondents by their letter dated 26th July, 1984/2nd August, 1984, rejected the petitioner's application for issuance of licence. It appears that the petitioner's applications for grant of such licence were also rejected right upto the year 1989. Being aggrieved thereby, the petitioner has filed this petition challenging action of the respondents in any manner refusing to grant licences for all these years.

4. This Court at the time of admission on 24th April, 1990 while admitting the above petition, had granted interim relief in terms of prayer clause (c), whereby the Court had directed the respondents to issue to the petitioner import licences from the year 1988 onwards pursuant to the petitioner's applications dated 8th January, 1988, 20th January, 1989, 23rd January, 1989 and 26th September, 1989. It appears that the petitioner has already obtained the said licences.

5. Mr.Bulchandani, learned Counsel for the petitioner brought to our notice that right from the year 1980-81, the petitioner has been regularly importing dry fruits and even after the said policy came into force in 1980-81, the petitioner has been regularly complying with the requisitions and had obtained requisite licences year after year. A very vital fact to be noticed that the petitioner had applied for import licence on 13.7.82, the petitioner was granted licence based on Bill of Entry No.874 on 4.5.79.

6. The contention of the petitioner that the respondent is very much aware of the aforesaid bill of entry and based on that year after year granted licence, ought not to have rejected the import licence only on the ground that the petitioner’s original triplicate copy of the Bill of Entry was not produced within 90 days. However, the petitioner had duly filed certified true copy of the said triplicate of the original Bill of Entry certified by the Assistant Commissioner of Police.

7. Though the petition has been filed in the year 1990, till date there is no affidavit in reply filed by the respondents controverting the above contentions and in any event, it is apparently clear that the respondents had granted import licences for three years based on Bill of Entry No.874 dated 4.5.79 and only from the year 1984 declined to grant licence though the petitioner has already furnished certified true copy of the Bill of Entry certified to be true by the Customs. In view of this, learned Counsel for the petitioner prays that petition be allowed.

8. Learned Counsel for the respondents is unable to controvert that three licences were issued based on the original triplicate copy of the Bill of Entry No.874 dated 4th May, 1979. Thereafter from 1984, only on the basis that the petitioner could not produce the triplicate copy of Bill of Entry which was misplaced during the shifting of office premises, the licence was not given.

9. There is no dispute that the petitioner had

furnished true copy of Bill of Entry certified to be true by the Assistant Commissioner of Customs alongiwth the affidavit of the petitioner. Having regard to the aforesaid facts and circumstances of the case, we find that the action of the respondents cannot be sustained in law. Hence, Rule is made absolute in terms of prayer clause (a), however with no order as to costs.

(S. RADHAKRISHNAN, J.)

(A.S. AGUIAR, J.)